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# Wisconsin Legislative Council

## ACT MEMO

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**2021 Wisconsin Act 4**  
[January 2021 Special Session Senate Bill 1]

**COVID-19, Civil Liability, and the  
Unemployment System**

2021 Wisconsin Act 4 requires a modernization plan for the unemployment insurance information technology system, addresses certain other aspects of the unemployment insurance program in response to the COVID-19 pandemic, and provides immunity from civil liability related to COVID-19.

### **MODERNIZATION OF UNEMPLOYMENT INFORMATION TECHNOLOGY SYSTEM**

The act requires the Department of Workforce Development (DWD) to begin updating the information technology systems used for processing and paying unemployment claims, in cooperation with the Department of Administration (DOA). Requests for proposals must be issued within 30 days of February 27, 2021, and the project must be undertaken by June 30, 2021. The Joint Committee on Finance (JCF) may approve an extension of the June 30, 2021 start date by up to 90 days through the passive review process.

To finance the project, DWD must seek and exhaust federal funding, and may finance the project under a master lease.<sup>1</sup> JCF may approve supplemental funding for the purpose of obtaining funding for the project. The Governor may waive most statutory purchasing procedures for the purpose of expediting the project, and, if a waiver is given, must report to DOA on the necessity of each waiver.

DWD and DOA must report to JCF and the Joint Committee on Information Policy and Technology on the status and cost of the project within 60 days of February 27, 2021, and then once for each quarter through completion of the project.

### **UNEMPLOYMENT PROGRAM CHANGES**

#### **Waiver of One-Week Waiting Period**

The act extends the waiver of the unemployment one-week waiting period under 2019 Wisconsin Act 185<sup>2</sup> from February 6, 2021, to March 13, 2021.

Without that waiver, state law specifies that unemployment benefits are not immediately paid for the first week of a person's new benefit year. The first week is referred to as a one-week waiting period, and benefits for the week are paid when the person has been paid the maximum benefit amount for the benefit year. This requirement was temporarily waived under 2019 Wisconsin Act 185 until February 6, 2021, and is extended under this act to March 13, 2021.

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<sup>1</sup> For more information on the master lease program, see Legislative Fiscal Bureau, [State Level Debt Issuance](#), Informational Paper #79 (January 2021).

<sup>2</sup> For more information on 2019 Wisconsin Act 185, see Legislative Council, [COVID-19 Legislation: 2019 Wisconsin Act 185](#), Information Memorandum (April 2020).

## **Unemployment Work-Share Program**

The act extends the flexibilities in the unemployment insurance work-share program under 2019 Wisconsin Act 185 from December 31, 2020, until the termination of the national emergency declared by the President in response to the novel coronavirus or July 3, 2021, whichever is earlier.

Generally, an employer may utilize a work-share structure to keep a business open and keep workers employed who would otherwise be laid off. The program uses partial unemployment benefits combined with continued, but reduced, work hours. To implement a work-share program, an employer must submit a plan to DWD for approval. The plan must meet certain state and federal requirements, including certification by the employer that retirement and health benefits will be continued for all participating employees.

2019 Wisconsin Act 185 created a temporary, more accessible, modified work-share program for employers to utilize in lieu of laying off workers. The modified requirements applied to a work-share plan submitted by an employer between April 16, 2020 and December 31, 2020, and are extended under this act until the termination of the national emergency declared by the President in response to the novel coronavirus or July 3, 2021, whichever is earlier.

The specific requirements for an employer's work-share plan that are relaxed under 2019 Wisconsin Act 185 included allowing the plan to:

- Apply to all employees, not only those in a specified work unit.
- Cover as few as two employees, rather than 20.
- Reduce hours by up to 60 percent, rather than 50 percent.
- Begin on the first Sunday after the plan is approved by DWD, rather than the second Sunday.

The plan was also not required to apportion the reduced work hours equitably among the employees.

## **Relief From Unemployment Benefit Charging**

The act extends the relief from unemployment benefit charging for employers under 2019 Wisconsin Act 185 from December 31, 2020, to March 13, 2021, and specifies that DWD must presume that all initial claims through that date relate to the public health emergency declared in Executive Order #72, unless certain exceptions apply.

Generally, private sector employers are required to contribute to the unemployment insurance reserve fund through quarterly payroll taxes. The payments are credited to individual employer accounts and when an employee is paid unemployment benefits, the benefits are charged to the employer's account.

Certain employers, such as governmental entities and nonprofit organizations, may finance benefits for employees through a reimbursement arrangement. Instead of paying a quarterly tax on payroll, a governmental or nonprofit employer under this arrangement receives a bill when an employee is paid unemployment benefits and the benefits are charged to the employer's account.

2019 Wisconsin Act 185 temporarily shifted responsibility for benefit payments to the state, if certain requirements are met. The act required DWD to determine if a claim for unemployment insurance is "related to" the public health emergency declared on March 12, 2020. Unless other exceptions apply, if the claim is related to economic difficulties arising from the public health emergency, DWD is required to charge the unemployment insurance reserve fund or the administrative interest and penalties account, depending on the type of employer, for benefits paid for weeks between March 12, 2020, and December 31, 2020. The temporary shift is extended under this act until March 13, 2021.

## Unemployment Extended Benefits

The act allows DWD to activate extended unemployment benefits through June 30, 2021, without meeting a time limitation that would otherwise apply.

Generally, extended unemployment benefits are activated during difficult economic times when unemployment rates exceed certain levels, subject to certain provisions in state and federal law.<sup>3</sup> In particular, state law specifies that a new extended unemployment benefits period may not begin until at least 13 weeks have passed since a prior extended unemployment benefits period ended. Under the act, DWD may waive this requirement to activate extended unemployment benefits, if occurring before June 30, 2021.

## IMMUNITY FROM CIVIL LIABILITY

The act provides immunity for entities from civil liability for a COVID-19-related injury or death, except in the case of reckless or wanton conduct or intentional misconduct. The immunity is retroactive to claims accruing on or after March 1, 2020, but does not apply to an action filed before February 27, 2021.

Specifically, under the act, an entity is immune from civil liability for the death of or injury to any individual, or any damages, caused by an act or omission that satisfies all of the following:

- The act or omission results in or relates to exposure, directly or indirectly, to the novel coronavirus identified as SARS-CoV-2 or COVID-19, or a viral strain originating from SARS-CoV-2, or conditions associated with the infection.
- The direct or indirect exposure occurred in the course of or through the performance or provision of the entity's functions or services.
- The act or omission does not involve reckless or wanton conduct or intentional misconduct.

For purposes of the immunity created under the act, an "entity" means a partnership, corporation, association, governmental entity, tribal government, tribal entity, or other legal entity. An "entity" includes a school, institution of higher education, nonprofit organization, and any employer covered by the state unemployment insurance laws. An "entity" also includes an employer, business owner, employee, agent, or independent contractor of the entity, regardless of whether the person is paid or is an unpaid volunteer.

The immunity created under the act does not limit, and is in addition to, any other immunity granted by law.

**Effective date:** February 27, 2021

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<sup>3</sup> For example, extended benefits were available for benefit weeks ending between May 23 and November 7, 2020, if a person had exhausted regular unemployment benefits and certain federal pandemic emergency benefits. See DWD, [DWD Launches Extended Benefit Program](#) (December 2, 2020).